IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4022 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMED @ BHOLU IBRAHIM ALAM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4022 of 2004

MR RJ GOSWAMI for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 16/07/03, passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the Act").

2. It was alleged against the petitioner that eight

offences were registered against him for offence punishable u/s.379 of the I.P.C. between 14/09/02 and 23/12/02. It was also alleged against the petitioner that two witnesses whose names were not diclosed to the petitioner, had rendered statements against the petitioner.

3. On the strength of the aforesaid registered and unregistered cases, the petitioner was held to be a "dangerous person" and with a view to prevent him from carrying on his illegal activities amounting to a threat to public order, he was ordered to be detained by impugned order of detention.

4. The petitioner has challenged the said order of his detention on several grounds. It has been contended by the petitioner that there was unexplained delay in passing the order of detention, and therefore, the said delay is fatal to the detention order. That, therefore, the order of detention is illegal and deserves to be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has contended that there was a delay in passing the order of detention. For this purpose, we can consider a few facts drawn from the ground of detention. The registered offences were registered against the petitioner between September '02 and December '02. There cannot be any dispute about the same. The compilation shows that the statements of witnesses were recorded by the concerned police officer as the Sponsoring Authority on 08/04/03, 01/06/03 and 01/06/03. They were verified by the detaining authority on 25/06/03. This shows that there was a delay in recording the statements of witnesses as alleged by the petitioner and thereafter, further consequential delay in verification thereof by the detaining authority.

7. It is required to be seen that the order of detention has been passed on 16/07/03. In the present case we find that in absence of affidavit to be filed by the detaining authority, it is not possible to hold that there was no delay in passing the order of detention. In this connection, the learned advocate for the petitioner has relied upon a decision of this Court in the case of

Elesh Nandubhai Patel V/s. C.P. Singh, Commissioner of Police, Ahmedabad City & Ors. reported in 1997(2) GLR 1375. The relevant observations can be drawn from Para 21 which is reproduced for ready reference as follows;

Para 21 : "In the instant case, the last registered case is of May 20, 1996. The petitioner - detenu was granted anticipatory bail by the competent Court. He was also grantred regular bail subsequently. The impugned order of detention has been passed on November 5, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authorty has relied on two incidents of 2nd Oct, 1996 and 10th Oct, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not bee registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detenion itself. If I am to buttress my findings, I would say that reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth V. S Ramamurthy, reported in 1993(2) Suppl. SCC 61."

8. The said decision was followed by this Court in S.C.A.No.920/2003 dated 19/05/03 (Coram : P.B.Majmudar, J.). There also similar observations have been made in Para 4 which may be reproduced for ready reference as follows;

"Having heard the learned counsel for the respective parties and considering the evidence on record, it is clear that solitary offence is registered against the petitioner detenu on 08/10/02, and therefore, there is a delay of more than one and half month is passing order which has not been explained by the detaining authority by filing affidavit in reply and it can be said that the statements have been recorded only with a view to cover the delay. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention cannot be sustained. Learned advocate

for the petitinoer does not press for any other points."

9. On the other hand, the learned AGP has relied upon a decision in the case of Premsing @ Pallu Jesing Rajput V/s. State of Gujarat & Ors. reported in 2000 (4) GLR 3675. In particular, she has relied upon the observations made in para 4 of the judgment;

"One of the grounds of challenge is that the detention order as computed from registration of last offence was passed after considerable delay. Hence, it has been rendered illegal and invalid. In support of this contention reliance has been palced upon the case of Pradeep Nilkanth Paturkar V/s. Ramamurthi & Ors. AIR 1994 SC 656. The facts of this case were that the detention order was passed on the basis of statements of witnesses as well as on the basis of registered cases against the detenu after five months and eight days from registration of last case and more than four months from submission of proposal. This case is apparently distinguishable on facts from the case under consideration. The grounds of detention show that the last offence agaisnt the petitioner was registered on 22/07/97. The detention order was passed on 16/06/98. However, two confidential witnesses gave statements disclosing incidents which took place on 07/04/98 and 15/05/98 respectively. It is, therefore, difficult to compute the delay only from the date of registration of last offence. The delay has to be computed from the date of commission of last offence and last offence was committed by the petitioner on 15/05/98. Though it was unregistered offence, on the face value of the statements of the witnesses narrating incident dated 15/05/98 it cannot be said to be false. After this incident dated 15/05/98 some time must have been taken by the sponsoring authority to collect material and prepare report. The report was submitted to the Detaining Authority who after examining the same passed the impugned order on 16/06/98 and hence period of 30 days intervened and this cannot be said to be inordinate delay. The delay in the case of Pradeep Nilkant (supra) was five months and eight days from the registration of the last case and four months from submission of proposal. These two dates do not fit in the facts of the case

before me. Hence, the impugned order of detention is not rendered invalid on account of delay in its passing."

10. The very obejct of passing an order of detention is to see that the person concerned is immediately detained with a view to immediately prevent him from carrying on his illegal activities. If the order of detention is not passed immediately, then the very object of detaining the person would be frustrated. In that view of the matter, the delay in passing the order of detention is fatal to the order of detention. In the present case, the delay is not a routine or ordinary and it has not been explained. Therefore, in view of the unexplained inordinate delay, the order of detention cannot be sustained in the eye of the law. Therefore, it is required to be quashed and set aside.

11. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 16/07/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Ahmed Bholu Ibrahim Alam, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)
pravin/